

1 Introduced by Representative Townsend of South Burlington

2 Referred to Committee on

3 Date:

4 Subject: Open Meeting Law; Public Records Act

5 Statement of purpose of bill as introduced: This bill proposes to:

6 (1) clarify and amend what activities constitute a “meeting” under the
7 Open Meeting Law;

8 (2) amend provisions related to fees that a public agency may charge in
9 connection with responding to a Public Records Act request;

10 (3) clarify and update provisions related to time periods for responding
11 to a Public Records Act request; and

12 (4) establish a position for an Open Government Ombudsman and
13 authorize the Ombudsman to investigate and adjudicate acts of public bodies
14 and public agencies alleged to violate the Open Meeting Law and the Public
15 Records Act and to carry out other activities related to these laws.

16 An act relating to the Open Meeting Law and the Public Records Act

17 It is hereby enacted by the General Assembly of the State of Vermont:

18 * * * Open Meeting Law * * *

19 Sec. 1. 1 V.S.A. § 310 is amended to read:

20 § 310. DEFINITIONS

1 As used in this subchapter:

2 * * *

3 (2)(A) “Meeting” means a gathering of a quorum of the members of a
4 public body for the purpose of discussing the business of the public body or for
5 the purpose of taking action. “Meeting” includes each communication within a
6 series of communications of any kind, directly or through intermediaries, to
7 discuss or take action on any business of the public body, even if the individual
8 communication does not involve a quorum of the public body.

9 (B) “Meeting” shall not mean written correspondence or an
10 electronic communication, including e-mail, telephone, or teleconferencing,
11 between members of a public body for the purpose of scheduling a meeting,
12 organizing an agenda, or distributing materials to discuss at a meeting,
13 provided that such a written correspondence or such an electronic
14 communication that results in written or recorded information shall be
15 available for inspection and copying under the Public Records Act as set forth
16 in chapter 5, subchapter 3 of this title.

17 (C) As long as a quorum of the members of a public body does not
18 discuss the body’s business or take action, “meeting” does not include a
19 gathering of a quorum of the public body at:

20 (i) a conference or meeting open to the public, or to which
21 members of the public are invited, that involves a discussion of general or local

1 interest to the public or to the public bodies attending the conference or
2 meeting;

3 (ii) a duly warned meeting of another public body, including a
4 meeting of a committee of a public body;

5 (iii) a ceremonial, social, or community event; or

6 (iv) a virtual gathering on an electronic platform as long as the
7 platform is open and accessible to all members of the general public without
8 obstacles such as fees or special permissions.

9 (D) The list in subdivision (C) of this subdivision (2) is not intended
10 to be exhaustive, but instead is intended to provide examples of gatherings that
11 do not fall under the definition of “meeting.”

12 (3) “Public body” means any board, council, or commission of the State
13 or one or more of its political subdivisions, any board, council, or commission
14 of any agency, authority, or instrumentality of the State or one or more of its
15 political subdivisions, or any committee of any of the foregoing boards,
16 councils, or commissions, except that “public body” does not include councils
17 or similar groups established by the Governor for the sole purpose of advising
18 the Governor with respect to policy.

19 * * *

1 Sec. 4. 1 V.S.A. § 318 is amended to read:

2 § 318. PROCEDURE

3 (a)(1) As used in this section, “promptly” means immediately, with little or
4 no delay, and, unless otherwise provided in this section, not more than three
5 business days:

6 (A) from receipt of a request under this subchapter; or

7 (B) in the case of a reversal on appeal by a head of the agency
8 pursuant to subsection (c) of this section, from the date of the determination on
9 appeal.

10 (2) A custodian or head of the agency who fails to comply with the
11 applicable time limit provisions of this section shall be deemed to have denied
12 the request or the appeal upon the expiration of the time limit.

13 (b) Upon request, the custodian of a public record shall promptly produce
14 the record for inspection or a copy of the record, except that:

15 (1) If the record is in active use or in storage and therefore not available
16 for use at the time the person asks to examine it, the custodian shall ~~so~~
17 promptly certify this fact in writing to the applicant and, in the certification, set
18 a date and hour within one calendar week of the request when the record will
19 be available ~~for examination~~.

20 (2) If the custodian considers the record to be exempt from inspection
21 and copying under the provisions of this subchapter, the custodian shall

1 ~~promptly so certify in writing. Such certification shall identify the records~~
2 ~~withheld and the basis for the denial. A record shall be produced for~~
3 ~~inspection or a certification shall be made that a record is exempt within three~~
4 ~~business days of receipt of the request, unless otherwise provided in~~
5 ~~subdivision (5) of this subsection. The certification shall:~~

6 (A) identify the records withheld;

7 (B) include the asserted statutory basis for denial and a brief
8 statement of the reasons and supporting facts for denial.~~The custodian~~
9 ~~shall also;~~

10 (C) provide the names and titles or positions of each person
11 responsible for denial of the request; and

12 (D) notify the person of his or her right to appeal to the head of the
13 agency any adverse determination.

14 ~~(3) If appealed to the head of the agency, the head of the agency shall~~
15 ~~make a determination with respect to any appeal within five business days after~~
16 ~~the receipt of such appeal. If an appeal of the denial of the request for records~~
17 ~~is in whole or in part upheld, the agency shall notify the person making such~~
18 ~~request of the provisions for judicial review of that determination under section~~
19 ~~319 of this title. [Repealed.]~~

1 (4) If a record does not exist, the custodian shall promptly certify in
2 writing that the record does not exist under the name given to the custodian by
3 the applicant or by any other name known to the custodian.

4 (5) In unusual circumstances as herein specified, the time limits
5 prescribed in this ~~subsection~~ section may be extended by written notice to the
6 person making ~~such~~ the request setting forth the reasons for ~~such~~ the extension
7 and the date on which a determination is expected to be dispatched. No such
8 notice shall specify a date that would result in an extension for more than ten
9 business days from receipt of the request or, in the case of a reversal on appeal
10 by a head of the agency pursuant to subsection (c) of this section, from the date
11 of the determination on appeal. As used in this subdivision, “unusual
12 circumstances” means to the extent reasonably necessary to the proper
13 processing of the particular request:

14 (A) the need to search for and collect the requested records from field
15 facilities or other establishments that are separate from the office processing
16 the request;

17 (B) the need to search for, collect, and appropriately examine a
18 voluminous amount of separate and distinct records ~~which~~ that are demanded
19 in a single request; or

20 (C) the need for consultation, which shall be conducted with all
21 practicable speed, with another agency having a substantial interest in the

1 determination of the request or among two or more components of the agency
2 having substantial subject matter interest therein, or with the Attorney General.

3 ~~(b) Any person making a request to any agency for records under~~
4 ~~subsection (a) of this section shall be deemed to have exhausted the person's~~
5 ~~administrative remedies with respect to each request if the agency fails to~~
6 ~~comply within the applicable time limit provisions of this section. Upon any~~
7 ~~determination by an agency to comply with a request for records, the records~~
8 ~~shall be made available promptly to the person making such request. Any~~
9 ~~notification of denial of any request for records under this section shall set~~
10 ~~forth the names and titles or positions of each person responsible for the denial~~
11 ~~of such request.~~

12 (c)(1) Any denial of access by the custodian of a public record may be
13 appealed to the head of the agency. The head of the agency shall make a
14 written determination on an appeal within five business days after the receipt
15 of the appeal.

16 (2) A If the head of the agency upholds the denial of a request for
17 records, in whole or in part, the written determination shall include:

18 (A) the asserted statutory basis for upholding the denial and;

19 (B) a brief statement of the reasons and supporting facts for
20 upholding the denial; and

1 recommend appropriate changes in these laws in order to promote
2 accountability consistent with Chapter I, Article 6 of the Vermont Constitution.

3 (c) The Ombudsman shall be:

4 (1) an attorney licensed to practice law in Vermont;

5 (2) a person of recognized judgment, objectivity, and integrity; and

6 (3) a person who is qualified to analyze problems of law, administration,
7 and public policy.

8 (d) An individual serving as Ombudsman shall not:

9 (1) be actively involved in political party activities or publicly endorse,
10 solicit funds for, or make contributions to political parties or candidates for
11 elective office;

12 (2) be a candidate for or hold any other elective or appointive public
13 office; or

14 (3) engage in any other occupation, business, or profession likely to
15 detract from the performance of his or her duties as Ombudsman or to result in
16 a conflict of interest or an appearance of impropriety or partiality.

17 § 326. DUTIES

18 The Open Government Ombudsman shall:

19 (1) As he or she deems necessary, provide information to the public,
20 public agencies, public bodies, and others regarding requirements of the Public
21 Records Act and of the Open Meeting Law.

1 (2) In his or her discretion, issue advisory opinions interpreting the
2 Open Meeting Law and the Public Records Act as may be needed to inform the
3 public, public agencies, public bodies, and others.

4 (3) Receive and investigate complaints on behalf of persons seeking
5 records under the Public Records Act or compliance with the Open Meeting
6 Law. The Ombudsman shall have authority to compel, by subpoena, the
7 attendance and testimony of witnesses and the production of books and
8 records, and 3 V.S.A. §§ 809a and 809b shall apply to all subpoenas issued
9 under this subdivision.

10 (4) Upon request, attempt to mediate disputes between a public body
11 and a person alleging an Open Meeting Law violation or between a public
12 agency and a person alleging an unlawful denial of records under the Public
13 Records Act.

14 (5)(A) For disputes under the Open Meeting Law, after the public body
15 has had the opportunity to respond under section 314 of this chapter, and for
16 disputes under the Public Records Act, following a determination on appeal by
17 the head of the public agency under section 318 of this chapter, if mediation
18 has been attempted under subdivision (4) of this section and is not successful,
19 the Ombudsman shall, upon request of all parties to the dispute, adjudicate
20 questions of compliance by issuing a binding written determination.

1 (B) Except as otherwise provided in this subdivision (5), the
2 contested case provisions of 3 V.S.A. §§ 809–815 shall apply to proceedings
3 under this subdivision (5).

4 (C) Within 30 days after the Ombudsman issues a written
5 determination under this subdivision (5), a party may appeal to the Superior
6 Court in Washington County, which shall review the matter de novo.

7 (D) A party to an Open Meeting Law or a Public Records Act dispute
8 is entitled to refuse to participate in mediation under subdivision (4) of this
9 section and to refuse to submit to an adjudication under this subdivision (5).

10 (6) Establish policies and procedures for receiving, investigating,
11 mediating, and adjudicating Open Meeting Law and Public Records Act
12 complaints and disputes.

13 (7) Develop and implement a reporting system to collect and analyze
14 information relating to complaints.

15 (8) On or before January 15 of each year, submit to the House and
16 Senate Committees on Government Operations a report on the work performed
17 by the Ombudsman during the previous calendar year.

18 Sec. 6. CREATION OF OPEN GOVERNMENT OMBUDSMAN POSITION

19 One part-time exempt Open Government Ombudsman position is created as
20 set forth in Sec. 5 of this act by using an existing position in the position pool.

1 Sec. 7. OPEN GOVERNMENT OMBUDSMAN FUNDING SOURCE

2 (a) Surcharge.

3 (1) In addition to the surcharge authorized under 2017 Acts and
4 Resolves No. 79, Sec. 13, and notwithstanding the provisions of 3 V.S.A.
5 § 2283(c) setting forth the purpose and rate of charges collected in the Human
6 Resource Services Internal Service Fund, in fiscal year 2019 and thereafter, a
7 surcharge of up to [##] percent, but not greater than the cost of the activities of
8 the Open Government Ombudsman authorized in Sec. 5 of this act, on the per-
9 position portion of the charges authorized in 3 V.S.A. § 2283(c)(2) shall be
10 assessed to all Executive Branch agencies, departments, and offices and shall
11 be paid by all assessed entities solely with State funds.

12 (2) The amount collected shall be accounted for within the Human
13 Resource Services Internal Service Fund and used solely for the purposes of
14 funding the activities of the Open Government Ombudsman authorized in
15 Sec. 5 of this act.

16 (b) Repeal. This section shall be repealed on June 30, 2020.

17 Sec. 8. 1 V.S.A. § 314(a) is amended to read:

18 (a) A person who is a member of a public body and who knowingly and
19 intentionally violates the provisions of this subchapter or a final determination
20 of the Open Government Ombudsman with respect to this subchapter, a person
21 who knowingly and intentionally violates the provisions of this subchapter on

